

**LENA C. TAYLOR**  
Wisconsin State Senator • 4th District

**Senate Committee on Judiciary, Corrections, Insurance,  
Campaign Finance Reform and Housing**

**Testimony of Senator Lena C Taylor**

**Senate Bill 19 – Liability of the State for Violation of Workers' Rights**

**Wednesday, February 11<sup>th</sup>, 2009**

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Honorable Senators,

Thank you for hearing testimony today on Senate Bill 19, regarding the liability of the state for violation of state workers' rights. As the bill's Senate author, I am pleased to be here this afternoon in support of this valuable legislation to help protect state workers' right to justice.

Under the 11<sup>th</sup> Amendment to US Constitution and Article IV, section 27 of the Wisconsin Constitution, the state may not be sued for violating the civil rights of its employees without waiving its sovereign immunity. This immunity applies to cases that originate from violations of the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Fair Labor Standards Act, and the Family Medical Leave Act.

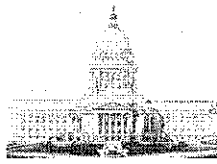
To date, Wisconsin has not waived immunity from cases arising from these laws. That is what this bill does. It allows the avenue of justice that every citizen enjoys. The right to seek remedy and redress of negligence's and neglect is a fundamental tenant of our legal system. In the coming days, Wisconsin will ask much of our state employees; it is only right and fair that they be allowed to hold their employer and our government to the same level of demand.

I urge your support of Senate Bill 19.

Thank you.



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STATE REPRESENTATIVE  
**CORY MASON**

WISCONSIN STATE ASSEMBLY  
62ND ASSEMBLY DISTRICT

**TO: Senate Committee on Judiciary, Corrections, & Housing**

**FROM: Representative Cory Mason**

**RE: Senate Bill 19; Assembly Bill 36**

**DATE: February 11, 2009**

Thank you Chairwoman Taylor and committee members for holding a hearing on Senate Bill 19. The Assembly companion of this bill is Assembly Bill 36. AB 36 and SB 19 restore the federal civil rights of 62,000 state and UW employees.

Due to several recent U.S. Supreme Court decisions, state and University of Wisconsin employees are not protected under several federal civil rights laws, including:

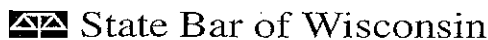
- Age Discrimination Employment Act
- Family Leave Medical Leave Act
- Americans with Disabilities Act
- Fair Labor Standards Act

The Court ruled that the Eleventh Amendment, which ensures that states are immune from lawsuits, supersedes the equal protection rights guaranteed to every citizen under the Fourteenth Amendment. The court also held, however, that if a state wants to waive its immunity in these matters, it can do so. This bill seeks to do just that.

Without the ability to access federal courts for protection under these fundamental civil rights, university and state employees are relegated to citizens with second class status. This bill very simply restores existing federal civil rights to every Wisconsin citizen.

I would be happy to entertain any questions you might have.

# Individual Rights & Responsibilities Section



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## TESTIMONY OF THE INDIVIDUAL RIGHTS AND RESPONSIBILITIES SECTION OF THE STATE BAR OF WISCONSIN IN SUPPORT OF SENATE BILL 19

### Before the Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform and Housing

February 11, 2009

Good afternoon. My name is Attorney A. Steven Porter, and I am here today representing the Individual Rights and Responsibilities Section of the State Bar of Wisconsin. The Individual Rights and Responsibilities Section strongly supports Senate Bill 19 and its Assembly companion bill.

The U.S. Supreme Court has been slowly undermining the ability of citizens, and especially state employees, to enforce federal civil rights laws and protective labor laws. One way they have done this is to overrule long-standing precedent to hold that Congress did not have the power to abrogate state sovereign immunity to hold the states accountable under those laws. As a result, citizens and state employees can no longer enforce these laws against their state's agencies and their state employers unless the state has consented to suit, or waived its sovereign immunity, to allow citizen and employee enforcement of those laws. The civil

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rights and protective labor laws affected include, among others: the Fair Labor Standards Act (FLSA), the Age Discrimination in Employment Act (ADEA), the Americans with Disabilities Act (ADA) and, in some respects, the Family and Medical Leave Act (FMLA). In some cases, the Supreme Court has overruled precedent that was over forty years old, as with the Fair Labor Standards Act (FLSA), and nearly thirty years old, as with regard to the Age Discrimination in Employment Act (ADEA), to achieve this result. In essence, the Supreme Court is saying that it's up to the states to step up and permit enforcement of civil rights and protective labor laws against them; Congress, alone, can no longer hold them accountable.

Because sovereign immunity only applies to the state and state agencies, employees of other governmental units such as municipalities and school boards and citizens are not blocked from suing these entities under the Supreme Court's decisions.

In February, 2001, when United States Supreme Court's decision in *University of Alabama v. Garrett* came down, I had just won an appeal in the United States Court of Appeals for the Seventh Circuit in a case against the State of Wisconsin Department of Transportation under the Americans with Disabilities Act. My client and I were very pleased to be able to proceed to trial with her claim after a long battle to vindicate her claim. But, when the Supreme Court's decision in *Garrett* came down, my client lost her claim for relief against the State DOT under the ADA.

My client had been employed by the State of Wisconsin DOT for twenty-two years as a low level clerk. Despite her severe dyslexia, dysgraphia and other learning and communications disabilities, her performance reviews had always reported that her performance was satisfactory, even exemplary. That is, until the DOT computerized the operations in my client's unit, and my client was required to become adept at using a new

computer operating system and new programs. The DOT brought in a trainer to train the employees on the new system, but, the trainer had no training or experience regarding training people with learning disabilities. My client requested that the DOT provide her with a tutor, which she could have received free from the Division of Vocational Rehabilitation, but her supervisors denied her request. As a result, my client was not able to learn the new system, and, therefore, she did not receive the promotions that the others in her unit who did not have learning disabilities received upon mastering the new computer system. Instead, my client was shunted off to another unit and a dead-end job with no increase in pay. What's more, she suffered humiliation, excessive distress and loss of her sense of confidence, self-worth and enjoyment of her job as result of her experiences in the training program.

I brought a claim under the Americans with Disabilities Act on behalf of my client to compel the Department of Transportation to provide my client with the trainer and training she needed in order to be able to learn the new computer system and advance in her job. Those hopes were nearly dashed when the United States Supreme Court ruled that, because of its new interpretation of state sovereign immunity, my client was no longer permitted to sue the State of Wisconsin under the Americans with Disabilities Act.

I urge this committee to promptly recommend Senate Bill 19 for passage.

*The State Bar of Wisconsin establishes and maintains sections for carrying on the work of the association, each within its proper field of study defined in its bylaws. Each section consists of members who voluntarily enroll in the section because of a special interest in the particular field of law to which the section is dedicated. Section positions are taken on behalf of the section only.*

*The views expressed on this issue have not been approved by the Board of Governors of the State Bar of Wisconsin and are not the views of the State Bar as a whole. These views are those of the Section alone.*

*If you have questions about this memorandum, please contact Adam Korbitz, Government Relations Coordinator, at [akorbitz@wisbar.org](mailto:akorbitz@wisbar.org) or (608) 250-6140.*



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February 11, 2009

To: Senate Judiciary, Corrections, Insurance, Campaign Finance Reform & Housing

From: Al Majkrzak, AARP Wisconsin State President

Re: Support for SB 19, related to employment discrimination

AARP Wisconsin supports SB 19, related to the State's liability for violation of the federal Family and Medical Leave Act of 1993, Fair Labor Standards Act or Age Discrimination in Employment Act of 1967 or Title I of the federal Americans with Disabilities Act of 1990. We want to thank Senator Lena Taylor and Representative Cory Mason for introducing this proposal again in this legislative session.

As you know, AARP Wisconsin is a national membership organization for people aged 50 and above with about 847,000 members here in Wisconsin.

I want to relate a story to you that I believe is very pertinent to this legislation. When I was a sophomore in high school, my grandfather retired, although he didn't call it retirement. To retire, as we understand it today, implies choice. He had no choice. He said that he was "pensioned off", and that was not a positive statement. He did not want to stop working, but he reached the age that his employer thought he could no longer do the job.

Two years later, when I was a freshman in college, he died. The death certificate said that he died from complications of pneumonia, but I can recall some of my relatives saying that the life went out of him when he was pensioned off.

In 1967, six years later "The Age Discrimination in Employment Act" was passed by the United States Congress. It prohibited discrimination in hiring, promotion, and termination practices, and since 1978 it has prohibited mandatory retirement in most sectors.

In that same year of 1978 my youngest son was born and my wife and I soon learned that he was visually impaired. As he grew older his impairment was categorized as meeting the definition of legally blind. I can proudly say that he has led a remarkable life, including earning Bachelor's and Master's Degrees, traveling all over the world and attaining meaningful and rewarding employment. As his father I can say that his success was due to his hard work and determination, but I also have to say that doors were opened for him and others with disabilities by the Americans with Disabilities Act of 1990.

I tell those two stories as illustrations of what meaningful legislation or the lack of it makes in the lives of real people.

The night President Obama was elected he said this: "Americans have sent a message to the rest of the world that we are not a collection of individuals or a collection of red states and blue states. We are and always will be the United States of America" That statement was about unity and equality, which is a consistent theme of what he says and does. He is also clear to say that they are the ideals of our nation that are not yet perfected and it is our job, as citizens, to make them more perfect.

That's why AARP advocates are here today. State employees are not united with other citizens in their ability to redress age or disability discrimination. All citizens in this state do not have equal standing under the law.

AARP Wisconsin supports SB 19 to allow state employees to sue the state for age or disability discrimination, as well as for violations of the Fair Labor Standards Act.

We do not believe our Founders meant to put an asterisk in the constitution giving equality to everyone but "state government employees"

At AARP our advocacy is about doing what is best for society and we believe that what is best for our state is that state employees not be relegated to second-class citizenship with respect to age and disability bias claims.

I was proud to stand with our Advocates and many other supporters when Rep. Mason introduced this legislation to the public on Martin Luther King Day. It was particularly fitting that it was introduced on that day, because the legislation is about right and wrong, it is about equal justice.

On April 16, 1963, the Rev. Dr. Martin Luther King Jr. in a letter written from a Birmingham jail, wrote this: "Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality.... tied in a single garment of destiny. Whatever affects one directly affects all indirectly.

Passing this bill will restore unity, equality and justice which will affect us all. Thank you.